

**IN THE CRIMINAL COURT OF DAVIDSON COUNTY, TENNESSEE,
AT NASHVILLE-DIVISION I**

STATE OF TENNESSEE

v.

PERRY A. MARCH

Case No. 99-B-1290

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MOTION TO DISMISS INDICTMENT

Comes the Defendant, Perry A. March, by and through counsel of record, and for his Motion to Dismiss Indictment returned against him in this cause, says:

1. On the 4th day of June, 1999, the Defendant was indicted by the Davidson County grand Jury sitting at Nashville, Tennessee for "Theft of Property over \$10,000.00 but less than \$60,000.00". The offense is alleged to have occurred on divers days from the 1st day of May, 1996 through the 1st day of August, 1998.

The State's response to Bill of Particulars evidence alleged conduct on 10/8/1996, 5/15/1996 and 7/31/1997. The indictment was returned one (1) year and 195 days after the last alleged offense.

2. The Defendant alleges the delay between the dates of the offenses and the date the indictment was returned has prevented the Defendant from (a) receiving a speedy trial, (b) preparing his defenses to the charges set forth in the indictment, and (c) has effectively inhibited the defendant from conducting a prompt and thorough investigation of the accusations in the indictment.

3. The Defendant alleges that the appropriate law enforcement officials knew, or should have known through the exercise of ordinary and reasonable care, that such delay would in fact inhibit the Defendant from preparing his defenses to the indictment, having witnesses available to testify and having documents available to prepare and conduct his defense.

4. Defendant alleges that the delay in this cause by the state in prosecution of the defendant has violated the defendant's right to Due Process under the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution and Article 1 § 8 and 9 of the Tennessee Constitution.

5. A pre-accusatorial delay that results in a violation of a Defendant's right to due process may result in the dismissal charges, **State v. Carico**, 968 S.W.2d 280, 285 (Tenn.1998). In determining whether such delay violates due process, "the trial court must consider the length of the delay, the reason for the delay, and the degree of prejudice, if any, to the accused." Id. Citing **State v. Gray**, 917 S.W.2d 668, 673 (Tenn.1996). In considering the prejudice prong, where the Stat is aware that an offense has been committed but the Defendant has not been charged, the trial court considers whether the accused sustained actual prejudice as a direct proximate result of the delay and whether the State caused the delay in order to gain a tactical advantage or to harass the accuse. Id. Citing **State v. Utley**, 956 S.W.2d 489, 496 (Tenn.1997).

This case involves alleged theft of accounts receivable occurring both while at Levine, Mattison, Orr and Gericiot and after his departure. Defendant has been unable, due to the delay in prosecution to locate his files evidencing work done on behalf of the individuals evidencing that the funds paid were proper or that the funds represented payment for work performed after his departure from the firm.

6. The Defendant maintains that he has suffered prejudice from the delay. The Defendant will offer further proof of the prejudice at the hearing on the motion.

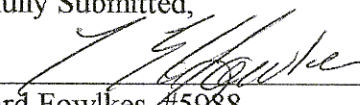
7. This Court must determine whether the State caused the delay in order to obtain a tactical advantage or to harass the Defendant. Valuable evidence has since been lost due to the

unnecessary delay in charging the Defendant. Thus, the delay in charging the Defendant was in order to obtain a tactical advantage or to harass him.

8. The State purposeful or through a long shot of happenstance waited until approximately two (2) weeks after Mr. March moved to Mexico to bring these charges. Mr. March having no knowledge of the charges had no reason to retain his record for what became a nine (9) year period.

For the foregoing reasons, the Defendant moves this Honorable Court to dismiss the above referenced indictment. Following the hearing on this Motion, the defendant request leave of the court to file additional points and authorities should the facts warrant such briefing.

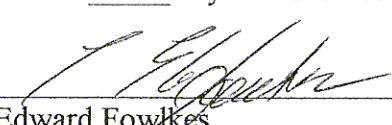
Respectfully Submitted,



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Certificate of Service

I hereby certify that a true and accurate copy of the foregoing Motion was forwarded by U. S. Mail, postage prepaid, **Amy Eisenbeck and Ben Winters**, Assistant District Attorney General, 222 Second Avenue North, Suite 500, Nashville, TN 37201 on this 4 day of November, 2005.



C. Edward Fowlkes